

1 §362 as to Movant in the above-entitled and numbered case so that Movant may commence and
2 continue acts necessary to enforce its security interest in real property commonly known as 2770
3 Mitchell Avenue, Oroville, CA 95966.

4 EMC Mortgage requests relief from stay in the above numbered Chapter 7 case
5 because there is no equity in the Property to benefit the Debtors or the estate and Movant's interest
6 is not protected by an adequate equity cushion. The Property is being surrendered as stated in the
7 Statement of Intentions.

8 This Motion is based upon the attached Declaration and the Memorandum of Points
9 and Authorities attached hereto, as well as upon the documents filed in support of the Motion.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **INTRODUCTORY STATEMENT**

13 EMC Mortgage requests the Court to grant it relief from the automatic stay because
14 there is no equity in the Property to benefit the Debtors or the estate and Movant's interest is not
15 protected by an adequate equity cushion. The Property is being surrendered as stated in the
16 Statement of Intentions.

17 **II.**

18 **STATEMENT OF FACTS**

19 1. **The Secured Debt.** On or about July 5, 2006, Linda Gail Strait made and
20 delivered a Promissory Note in the original principal amount of \$168,000.00, secured by a First
21 Priority Deed of Trust on the Property commonly known as 2770 Mitchell Avenue, Oroville, CA
22 95966 ("PROPERTY"). True and correct copies of the Note and Deed of Trust are attached as
23 Exhibits "1" and "2", respectively.

24 2. **The Default Under The Note.** The Note and Deed of Trust are
25 contractually due for the March 1, 2009 payment. As a result of the default, EMC Mortgage desires
26 to record a Notice of Default and Election To Sell against the Property. The total delinquency
27 under the Note is set forth in detail on Exhibit "3" to the Motion.

28 3. **The Debtors' Interest In The Property.** Linda Gail Strait is the owner of

record of the Property. Her husband, Dean Wayne Strait (together with Linda Gail Strait, “DEBTORS”), claims a community interest in the Property. See Exhibit “4”, attached hereto.

4. **The Filing Of The Instant Petition.** On or about May 28, 2010, Dean Wayne Strait AND Linda Gail Strait filed the instant Chapter 7 Petition as Case No. 10-34298.

5. **The Total Indebtedness Under The Note.** The total indebtedness owed to EMC Mortgage, exclusive of attorneys’ fees, is as follows:

Principal Balance:	\$	167,931.32
Interest Accrued from February 1, 2009 to July 6, 2010	\$	17,715.02
Escrow Advance:	\$	3,220.49
Late Charges:	\$	619.20
NSF Charges:	\$	75.00
Recoverable Balance:	\$	193.00
TOTAL:	\$	189,754.03

6. **The Total Liens On The Property.** The Property is encumbered by the following liens:

	<u>SECURED CREDITOR</u>	<u>LIEN AMOUNT</u>
1.	EMC Mortgage (1 st trust deed)	\$ 189,754.03
2.	EMC Mortgage (2 nd trust deed)	\$ 42,000.00
	TOTAL	\$ 231,754.03

7. **The Value Of The Property.** By the Debtors’ own admission, the Property has a fair market value of only \$100,000.00. Accordingly, there is no equity in the Property to benefit the Debtors or the estate. True and correct copies of the Debtors’ Schedules A and D are attached hereto as Exhibit “4”. A true and correct copy of the Voluntary Lien Report evidencing the amount of the lien on the second deed of trust is attached as Exhibit “6”.

III.

RELIEF FROM STAY SHOULD BE GRANTED UNDER SECTION 362(d)(2) BECAUSE THERE IS NO

1 **EQUITY IN THE PROPERTY, NOR REORGANIZATION IN EFFECT**

2 The evidence demonstrates that there is no equity in the Property. By the Debtors'
3 own admission, the Property has a fair market value of \$100,000.00 while the total indebtedness on
4 the Property is \$231,822.71. Based on the foregoing and the liquidation nature of this Chapter 7
5 proceeding, the stay should be terminated immediately. EMC Mortgage has satisfied its burden
6 under Section 362(d)(2).

7 **IV.**

8 **RELIEF FROM STAY SHOULD BE GRANTED UNDER**
9 **SECTION 362(d)(1) DUE TO THE LACK OF ADEQUATE PROTECTION FOR**
10 **MOVANT.**

11 The evidence demonstrates that EMC Mortgage is not protected by an adequate
12 protection cushion. By the Debtors' own admission, the Property has a fair market value of
13 \$100,000.00 while the total amount owed to EMC Mortgage is \$189,754.03. Based on the
14 foregoing, the stay should be terminated immediately. EMC Mortgage has satisfied its burden
15 under Section 362(d)(1).

16 **V.**

17 **RELIEF FROM STAY SHOULD BE GRANTED UNDER**
18 **SECTION 362(d)(1) FOR CAUSE AS THE PROPERTY IS BEING SURRENDERED.**

19 The Property is being surrendered as stated in the Statement of Intentions. Based on
20 the foregoing, the stay should be terminated immediately. EMC Mortgage has satisfied its burden
21 under Section 362(d)(1).

22 **VI.**

23 **REQUEST FOR JUDICIAL NOTICE.**

24 Pursuant to Rule 201 of the Federal Rules of Evidence, as made applicable herein by
25 Rule 9017 of the Federal Rules of Bankruptcy Procedure, EMC Mortgage requests that the Court
26 take judicial notice of the following facts:

- 27 1. The Debtors contend that the Property has a fair market value of \$100,000.00.
28 See Exhibit "4".

2. In addition to EMC Mortgage's lien, the Property is encumbered by a second deed of trust in the amount of \$42,068.68. See Exhibit "4".

3. The Property is being surrendered as stated in the Statement of Intentions.
See Exhibit “5”.

VII.

CONCLUSION.

For the foregoing reasons, and based upon the evidence set forth in this Motion, this Court should grant the relief from the automatic stay to allow EMC Mortgage to enforce its rights and remedies under its Note and Deed of Trust including a waiver of the 14-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

DATED: July 28, 2010

Respectfully Submitted,

MALCOLM ♦ CISNEROS, A Law Corporation

By: /s/ Erica T. Loftis
ERICA T. LOFTIS
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